

In response, enclosed herewith is a declaration by applicant, i.e., Gary L. Crawford. As stated in the declaration, Mr. Crawford has been designing and developing fog and haze machines for the entertainment industry for approximately 25 years. Several years ago, in early 2000, he was approached by Bruce Vergote, the person identified as inventor in U.S. Published Patent Application No. 2004/0035879 (Application No. 10/641,857) regarding the use of one of Mr. Crawford's previously designed machines to dispense a bird repellent chemical in a particular particle size. Mr. Vergote had spent several years attempting to use other companies' machines to dispense this chemical and had been unsuccessful. The test of the haze machine previously developed by Mr. Crawford was unsuccessful. With the understanding that Mr. Vergote would purchase and market successful machines, Mr. Crawford designed and developed a new haze machine that successfully dispensed the chemical in a suitable size. Thereafter, the above-identified provisional application (Application No. 60/405,633) was prepared entirely by Mr. Crawford and filed. Later, at Mr. Vergote's insistence because he was to pay for the design and development efforts and market the successfully designed machine, Mr. Vergote's name was added. Mr. Crawford has subsequently discussed inventor requirements with a patent attorney who advised him that the threshold question in determining inventorship is who conceived the invention defined by the claims of a patent application and that one who suggested an idea or a result to be accomplished, rather than the means of accomplishing the idea or result, is not an inventor (M.P.E.P. 2137.01.). Based on the advice received from the patent attorney, Mr. Crawford believes that his prior instructions to have Bruce Vergote added to U.S. Provisional Patent Application No. 60/405,633 were in error. Mr. Vergote's sole contribution was advising Mr. Crawford of the need for a machine to dispense a particular type of chemical (methyl anthranilate) in a particle size of 10 microns or less. In other words, Mr. Vergote suggested an idea or a result. Mr. Vergote did not suggest any means of accomplishing the idea or result and,

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

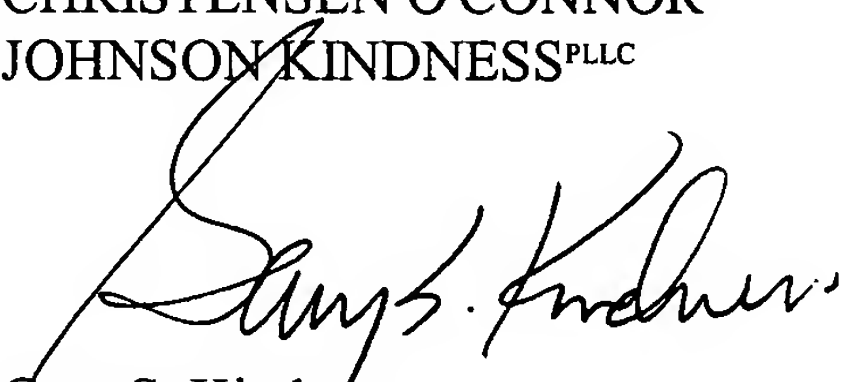
thus, is clearly not an inventor. Mr. Vergote did not conceive of any of the steps or elements of the claims in the present application. All of the claim steps or elements were conceived by Mr. Crawford.

In view of the foregoing, applicant respectfully submits that the addition of Mr. Vergote to Provisional Application No. 60/405,633 was clearly in error and should not have occurred. Since Mr. Vergote did not make an inventive contribution to the claims of the present application, no question of derivation exists. As a result, applicant submits that the rejection of the claims under 35 U.S.C. § 102(f) is in error, requests that it be withdrawn and this application allowed.

If the Examiner has any questions, he is invited to contact applicant's attorney at the number set forth below.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Gary S. Kindness
Registration No. 22,178
Direct Dial No. 206.695.1702

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first-class mail with postage thereon fully prepaid and addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

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GSK:aw

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100